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KGF Development LLC v. City of Ketchum Respondent's Brief 2 Dckt. 36162

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IN THE SUPREME COURT OF THE STATE OF IDAHO

KGF DEVELOPMENT, LLC,

Plaintiff/Appellant,

vs.

**CITY OF KETCHUM, a Municipal
Corporation of the State of Idaho,**

Defendant/Respondent,

**260 FIRST, LLC, an Idaho Limited
Liability Company,**

Intervenor/Respondent

Supreme Court No. 36162-2009

INTERVENOR/RESPONDENT 260 FIRST, LLC's OPPOSITION BRIEF

**Appeal from the District Court of the Fifth Judicial District
The Honorable Robert J. Elgee, Presiding**

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STATEMENT OF THE CASE

A. NATURE OF THE CASE

KGF has been trying to sell multi-million dollar penthouses in its Copper Ridge building since 2003. Four-years later, in 2007, the City of Ketchum enacted a TDR Ordinance which would allow the development of the adjacent property owned by 260 First LLC at a height that would arguably impinge upon the views of Mount Baldy from the KGF penthouses.

By this action KGF is seeking to preserve the west-facing views of its penthouses by claiming that Ketchum's TDR Ordinance No. 1034 was adopted in violation of the *Local Land Use Planning Act* ("LLUPA") and the *Historic Preservation Act*, and therefore the 260 First building cannot be developed as planned.

Honorable Robert J. Elgee, District Judge for the Fifth Judicial District, granted summary judgment against KGF, and determined that the City enacted TDR Ordinance No. 1034 with all lawful authority. KGF timely appealed this judgment.

B. COURSE OF PROCEEDINGS BELOW

On February 22, 2007, the Ketchum City Council adopted Ordinance 1005. The Ordinance allowed for the transfer of development rights ("TDR's"). KGF appealed the adoption of Ordinance 1005 and sought a declaratory judgment that: (1) the ordinance was void for faulty notice; and (2) that the Ordinance exceeded the City's authority (Blaine County Case No. CV-07-250).¹ On April 30, 2008, the District Court ruled that Ordinance 1005 did not exceed the City's authority, but that it was void due to faulty notice in its enactment.

¹ Blaine County Case No. 07-250 was later consolidated with Blaine County Case No. 08-167, an administrative appeal and declaratory judgment action contesting the issuance of a building permit under Ordinance 1005.

In the meantime, on February 19, 2008, the Ketchum City Council adopted Ordinance 1034. Ordinance 1034 essentially restated Ordinance 1005 but cured the notice problem. KGF timely filed a declaratory judgment and an administrative appeal from the City's adoption of Ordinance 1034. That case was filed as Blaine County Case No. CV 08-233.

The parties subsequently stipulated to the dismissal of the Declaratory Judgment action in Blaine County Case No. CV 08-233 and to its re-filing as Blaine County Case No. CV 08-837. On December 12, 2008, KGF filed for summary judgment in this CV 08-837 case. Briefs were submitted and oral argument was held on January 12, 2009. At the end of oral argument, the District Court granted summary judgment against KGF. Judgment was entered January 28, 2009. KGF filed a timely Notice of Appeal of this judgment on February 4, 2009.

C. STATEMENT OF FACTS

260 First is an owner of the real property Lots 5, 6, 7, Block 38, Ketchum Townsite, commonly known as 260 First Avenue, located at Sun Valley Road and First Avenue. This Property is directly west of the Copper Ridge Condominiums, located at Second Street and Washington Ave., owned by KGF Development, LLC. *See* Record ("R."), p. 160 (Affidavit of Scott Roberts ("Roberts Aff."), ¶ 2

In February 2008, 260 First began construction on this site of a four-story, 47,000 square foot retail and residential building at 260 First Avenue consisting of 22 market-rate condominiums and seven deed-restricted affordable units as well as approximately 6,500 square feet of ground floor retail and a 15,287 square foot sub-grade parking garage (the "Project"). *Id.* ¶ 3

In designing and developing the Project, 260 First has relied on the Ketchum TDR Ordinances which allows the addition of the fourth-floor. On February 22, 2007, the City

enacted its first TDR Ordinance, No. 1005. In the TDR system, certain sites are designated as "sending sites" and have development rights to sell. Property owners in "receiving sites" can buy those rights to create greater density in other parts of town. The TDR Ordinance provides a mechanism for increasing desired density in the community core while at the same time preserving open-spaces and heritage/historic buildings, providing affordable housing in downtown Ketchum, and providing important ground-floor retail spaces which are recognized as crucial in revitalizing the City's downtown core (commonly referred to by the City of Ketchum as Inclusionary Zoning). *Id.* ¶ 6

Furthermore, there were incentives, designed to offset the additional costs of the Inclusionary Zoning required of the developer, which allow larger buildings capable of generating enough additional revenue to offset the cost of the inclusionary zoning (workforce housing units, street level retail, etc.). Without the incentives, the inclusionary zoning adopted by the city would in actuality be a down-zone from the City's previous zoning code. *Id.* ¶ 7

260 First had been in negotiations with the owner of Memory Park in Ketchum to purchase TDRs which are necessary for the fourth-floor of the Project. Memory Park is an "open-space" park, and a designated sending site. *Id.* ¶ 8.

On or around February 19, 2008 the City enacted Ordinance No. 1034 (the "new" Ordinance), which is substantially similar to the previous TDR Ordinance No. 1005. The Ordinance allows 260 First to build a fourth-floor on the Project, which effectively subsidizes or helps pay for the community housing and ground-floor retail units which the City of Ketchum has deemed vital to the sustainability and vibrancy of the community.

In reliance on the TDR Ordinance, which has permitted the present design of the Project, KGF has expended literally millions of dollars in acquisition, design, and Project fees, and has

commenced construction work on the Project. These expenses and work on the Project are detailed in the Affidavit of Scott Roberts. *See* R. 160.

ADDITIONAL ISSUES PRESENTED ON APPEAL

Whether 260 First is entitled to an award of costs and attorneys' fees.

ARGUMENT

THE TDR ORDINANCE DOES NOT EXCEED THE CITY'S AUTHORITY TO REGULATE LAND USE

I. Incorporation by Reference

260 First incorporates by reference as if fully set forth herein the law and argument set forth in the City of Ketchum's briefing. In particular, the City has authority to create TDR programs to further planning goals and preserve historic properties under existing statutes, LLUPA, and the general police powers granted in the Idaho Constitution.

II. The City Has Authority Under the *Historic Preservation Act* to Enact the TDR Ordinance

The *Preservation of Historic Sites Act*, Idaho Code § 67-4601 *et seq.*, permits the City to use Transferrable Development Rights to protect historic and culturally significant properties.

Idaho Code § 67-4619 provides:

Any county or city governing body **may establish procedures authorizing owners of designated historic properties to transfer development rights in such amounts and subject to such conditions as the governing body shall determine.** For the purposes of this section, "development rights" are the rights granted under applicable local law respecting the permissible bulk and size of improvements erected thereon.

(emphasis added). "Historic properties" are very broadly defined in the Act (Idaho Code § 67-4602(a)) as:

"Historic property" shall mean any building, structure, area or site that is significant in the history, architecture, archeology or culture of this state, its communities or the nation.

Notably, KGF does not argue that those "sending-site" historic properties designated by the City

in the Ordinance are not “significant in the history, architecture, archeology or culture” of the City of Ketchum, or otherwise do not comply with the definition in § 67-4602(a)

Indeed, the City undertook a careful analysis in determining historic properties: the City reviewed the historical, architectural, educational, and cultural significance of the sites (*see* R. 68; Robrahn Affidavit); those sites were reviewed with the Ketchum Historic Preservation Commission (Robrahn Aff., ¶ 12); and owners of proposed historic sites received advance written notice (Robrahn Aff., ¶ 13).

KGF’s challenge to the Ordinance is based solely on the argument that it violates one sentence in Idaho Code § 67-4614. The one sentence at issue states:

In order for any historic property to be designated in the ordinance, it must in addition meet the criteria established for inclusion of the property in the national register of historic places.

It is acknowledged that the City’s sending site “historic properties” are not all eligible for inclusion in the national register of historic places.

However, what is fatal to KGF’s argument is that the “ordinance” referred to in the above-cited language in Idaho Code § 67-4614 IS NOT the TDR ordinance as contemplated by Idaho Code § 67-4619, or those other protective measures which may be adopted pursuant to Idaho Code § 67-4612 and 67-4613 (see below). Rather, the ordinance that the one sentence refers to is that “ordinance” identified in the beginning of § 67-4614, and which is subject to the subsequent § 67-4615 and § 67-4616 requirements.

If a site is a designated historic property pursuant to § 67-4614, a special procedure for designation set forth in § 67-4615 must be followed. (Section 67-4615, in its first sentence, specially refers to § 67-4614). A § 67-4614 designated site is also subject to special burdens set forth in the next section, § 67-4616 (which refers to § 67-4615). For example, no remodel of a

designated historic property can take place until a six (6) month waiting period has passed.

At most, ambiguity arises when seeking to reconcile: (1) the definition of “historic property” in § 67-4602(a); (2) the purported requirement as advanced by KGF that all “historic properties” must be eligible for inclusion on the national register for historic places; and (3) the very broad grant of authority contained in Idaho Code § 67-4612, 4613 and 4619. *See* Idaho Code § 67-4612, which suggests that the City may go beyond those powers granted in Idaho Code § 67-4619 to protect historic properties:

§ 67-4612. Special restrictions. In addition to any power or authority of a county or city to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing body of any county or municipality is empowered to provide by ordinances, special conditions or restrictions for the protection, enhancement and preservation of historic properties; provided however, that nothing in this chapter shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the state of Idaho.

Upon review of the Act as a whole, and the stated legislative intent, any ambiguity should be resolved with the conclusion that the TDR Ordinance was enacted in compliance with the Act. According to KGFs interpretation no municipality could undertake any program to protect properties of historical or cultural significance via any of the powers provided by Idaho Code § 67-4612, *Special Restrictions*, § 67-4613, *Historic easements*, and/or § 67-4619, *Transfer of Development Rights*, unless each and every protected property:

- (1) Is saddled with the restrictions of § 67-4616;
- (2) Is eligible for inclusion on the national register of historic places per Idaho Code § 67-4614; and

according to KGF’s rationale, although never highlighted in their brief;

- (3) Each of the properties must have “a suitable sign or marker on or near the property indicating that the property has been so designated” as mentioned in Idaho Code § 67-

4614.

These restrictions, and KGF's desired interpretation, would discourage the designation and preservation of historic properties, and negate the purpose and intention of the Act. As the District Court previously observed, a reasonable interpretation of these statutes, when read together, is that:

- There is one class of properties falling within the § 67-4614 designation – and subject to the § 67-4615 procedures and § 67-4615 burdens, that must meet the criteria for the national registry, cannot be altered or demolished without giving 180 days notice to the local historic preservation commission, and must have a suitable sign or marker on the property.
- There is another class of properties which may be called “historic properties” by the City and protected and preserved in the manner of § 67-4612, § 4613, and § 67-4619.

Given the burdens on property in § 67-4616, it is understandable that a series of steps must be taken prior to any historic designation, including meeting the criteria established for inclusion of the property in the national register of historic places (§ 67-4614), and a special procedure must be followed for such designation (§ 67-4615). However here, with the City Ordinance, designation as a heritage property "sending site" carries no such burdens of a six-month waiting period pending remodel or demolition, etc. The Ordinance is a completely voluntary program. Parties need not participate in the program; heritage sites are not required to sell their TDR rights – they may maximize the development potential irrespective of TDR, and are not otherwise burdened by the designation as a TDR “Sending Sight” – in fact it is a significant benefit insomuch as the development rights may be sold at a profit to the landowner if they choose.

It is an established principal that specific ordinances are presumed to be consistent with

and independent of general state law. See Norman J. Singer and J.D. Shambie Singer, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION, § 30:5 (6th ed.)² A statute and an ordinance will not be held to be repugnant to one another if any reasonable construction upholding both can be reached. *Id.* Moreover, when a court engages in statutory construction, it has the duty to ascertain the legislative intent and give effect to that intent. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999). The Court is to avoid absurd or unconstitutional construction of a statute. *Evans v. Teton County*, 139 Idaho 71, 73 P.3d 84 (2003), *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 987 P.2d 300 (1999). The purpose of the *Preservation of Historic Sites Act* is set forth in Idaho Code § 67-4601:

...[I]t is hereby declared to be the ***public policy and in the public interest of this state to engage in a comprehensive program of historic preservation, undertaken at all levels of the government*** of this state and its political subdivisions, to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of the citizens of this state. ***It is hereby declared to be the purpose of this act to authorize the local governing bodies of this state to engage in a comprehensive program of historic preservation.***

As set forth above, KGF's desired interpretation of the *Preservation of Historic Sites Act* would frustrate the purposes of the Act, and in fact inhibit the municipalities from enacting "ordinances, special conditions or restrictions for the protection, enhancement and preservation of historic properties."

III. The City Has Authority Under LLUPA to Enact the TDR Ordinance

Idaho Code § 6515A(1)(a) provides in part:

Any city or county governing body may, by ordinance, create development rights and

² Citing *City of Chicago v. Hertz Commercial Leasing Corp.*, 71 Ill. 2d 333, 17 Ill. Dec. 1, 375 N.E.2d 1285 (1978); *New York Zigman v. Town of Hempstead*, 120 A.D.2d 520, 501 N.Y.S.2d 718 (2d Dep't 1986); *Vink v. New York State Div. of Housing and Community Renewal*, 285 A.D.2d 203, 729 N.Y.S.2d 697 (1st Dep't 2001); *City of Virginia Beach v. Virginia Restaurant Ass'n, Inc.*, 231 Va. 130, 341 S.E.2d 198 (1986); *Anchor Sav. & Loan Ass'n v. Equal Opportunities Com'n*, 120 Wis. 2d 391, 355 N.W.2d 234 (1984).

establish procedures authorizing landowners to voluntarily transfer said development rights subject to:

(a) Such conditions as the governing body shall determine to fulfill the goals of the city or county to preserve open space, protect wildlife habitat and critical areas, and enhance and maintain the rural character of lands with contiguity to agricultural lands suitable for long-range farming and ranching operations;

It is noteworthy that the section specifically empowers *cities* to enact TDR programs. While cities generally do not have "wildlife habitat" and "agricultural lands" to protect, they do have "open spaces," "critical areas," and other significant land resources worthy of protection via TDR programs. While KGF contends Idaho Code § 6515A cannot be used to protect historic/open-space properties, this argument is not supported by the by the language or intent of the statute.

The enumeration of purposes for TDRs set forth in Idaho Code § 6515A(1)(a) is *not* exhaustive or inclusive, and does not exclude the use of TDRs for other purposes, including the protection of historic properties. As set forth in the legislative history of the Section:

This legislation program would allow any county or city governing body to establish a program in which the transfer of development rights may be utilized as an option to ***protect significant land resources*** while compensating the property owner. A Transfer of Development Rights Program involved the transfer of future development away from a resource protection area to an area appropriate for development. The governing body determines the amounts and conditions of such TDRs ***to fulfill the goals of the county or city pertaining to preservation and conservation of significant resources.***

R. 211 (Affidavit of Kathleen Rivers, Exhibit 1, p. 4, Statement of Purpose (emphasis added)).

The intent to provide municipalities the ability to protect significant land resources through the TDR program is evidenced through the legislative history. *See, e.g.,* 3/1/99 Minutes of the Revenue and Taxation Committee, Representative Jacquet, a sponsor of the bill, explained that TDRs "***may be utilized as an option to protect significant land resources***" (R. 211; Rivers Aff., Exhibit 1, p. 7 (emphasis added)); 3/15/99 Minutes of the Revenue and Taxation Committee: "The governing body determines the amounts and conditions of such TDRs ***to fulfill***

the goals of the county or city pertaining to the preservation and conservation of significant resources" (R. 211; Rivers Aff., Exhibit 1, p. 13 (emphasis added)).

In short, Idaho Code § 6515A does empower cities to undertake a critical review of its significant land resources, designate heritage properties as such resources, and undertake a TDR program to provide for their preservation. In addition, the preservation of historic and park properties protects "open spaces" as specifically allowed by Section 6515A. The TDR Ordinance at issue designates *inter alia* historic/heritage properties and public parks or open-spaces within the City. *See* Ordinance, Section 2(I(5)(i) (page 9) (Exhibit A):

Properties approved as a public park or open space not designated as a Sending Site may apply to the City for designation.

See also Section 1(5) (page 5).

Valid Exercise of Police Powers. The Ketchum City Council hereby finds that the ordinance is reasonably necessary to promote the public health, safety and welfare. The traditional scale sites promote quality of life by providing small, less dense projects while moving density to more appropriate locations

By seeking to preserve those heritage sites that are overwhelmingly 1-2 stories high, and allowing the sale of their development rights, the City ensures that those open spaces and view corridors above those buildings are preserved. In addition, the City has designated open-space parks such as the Memory Park in Ketchum as sending sites. In this case 260 First has been actively engaged in negotiations to purchase TDRs from the Memory Park site. *See* R. 160 (Affidavit of Scott Roberts).

260 First is utilizing the TDR program to provide a development in downtown Ketchum with commercial retail spaces and affordable housing residential units. These are goals that the City properly recognized as civic priorities in enacting its new development ordinances. *See* R. 68 (Affidavit of Elizabeth Robrahn). While KGF complains of diminished penthouse views (and

reduced sale prices), KGF cannot properly complain that the TDR Ordinance was enacted in violation of or without compliance with LLUPA.

ATTORNEY FEES ON APPEAL

Respondent 260 First, LLC seeks an award of the fees that it has been forced to incur to defend against this appeal of the District Court's decision. Fees on appeal can be awarded if the appeal was brought or defended frivolously, unreasonably, or without foundation. *Gustaves v. Gustaves*, 138 Idaho 64 , 57 P.3d 775 (2002). "An award of attorney fees is appropriate if the law is well-settled and the appellants have made no substantial showing that the district court misapplied the law." *Burns v. Baldwin*, 138 Idaho 480, 487 (2003), quoting *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 377 (1999).

In this case, KGF does not make any showing that the District Court failed to apply the law correctly. To the contrary, KGF rehashes nearly *in toto* its failing argument to the lower court. KGF's contentions are not supported by Idaho law, and there has been no attempt to demonstrate that the District Court misapplied the law. Therefore, attorneys' fees should be awarded against Appellants and in favor of 260 First, LLC.


CONCLUSION

For years KGF has been attempting to sell several multi-million dollar penthouses on the top-floor of its Copper Ridge building. The penthouses were understandably built with extensive west-facing windows to maximize the "Baldy" views (and justify the penthouses' \$3,000,000.00 sales prices). While KGF admittedly never anticipated that new zoning on adjacent properties might impact the Baldy views, it also admittedly never took any action to preserve its views in perpetuity by purchasing the adjoining property, purchasing easements, etc. KGF does not have a vested right to favorable penthouse views.

Instead, KGF seeks to preserve its penthouse views by attacking City legislation that would allow 260 First to build a fourth floor. This legislation, Ketchum TDR Ordinance No. 1034, was designed in part to address the severe development challenges facing the City of Ketchum, including the deteriorating Commercial Core District and the need for economic revitalization. However, as set forth above, the City adopted the TDR Ordinance with all lawful authority. The judgment of the District Court's decision should be affirmed.

DATED: July 10, 2009

LAWSON LASKI CLARK & POGUE, PLLC



Michael D. Pogue
Attorneys for Intervenor/Respondent
260 First, LLC

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on July 10, 2009, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

Fritz Xavier Haemmerle
Haemmerle & Haemmerle, PLLC
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☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
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Stephanie Jaymes Bonney
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☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Michael D. Pogue

EXHIBIT A

ORDINANCE NO. 1034

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, RESTATING KETCHUM MUNICIPAL CODE SECTION 17.64.010.I, TRANSFER OF DEVELOPMENT RIGHTS, IN ITS ENTIRETY WITH THE FOLLOWING CHANGES: CLARIFYING HERITAGE SITE DESIGNATION CRITERIA, ALLOWING A PROPERTY OWNER TO BUILD AN ADDITION TO A HERITAGE SITE BUILDING WITHOUT RESTRICTING THE AMOUNT OF DEVELOPMENT RIGHTS THAT CAN BE CONVEYED, ESTABLISHING REQUIREMENTS AND STANDARDS FOR SENDING SITES DESIGNATED FOR SCALE ONLY, REQUIRING A SITE SURVEY STAMPED BY A SURVEYOR LICENSED IN THE STATE OF IDAHO, DELETING FIVE STORY HOTEL DESIGNATION CRITERIA, ADDING APPLICABLE HERITAGE SITE CRITERIA TO LEGAL DESCRIPTIONS OF SENDING SITES; AMENDING SECTION 17.64.010.K, DEVELOPMENT SPECIFICATIONS FOR SITE DESIGN AND BUILDING FORM, SUBSECTIONS K.1.a.iii.D.2., K.1.b.iii.D.2., K.1.c.iii.D.2., K.1.e.iii.C.2 and K.1.f.iii.D.2, BY CHANGING THE FOURTH AND FIFTH FLOOR SETBACK REQUIREMENT; AMENDING SECTION 17.64.010.K, DEVELOPMENT SPECIFICATIONS FOR SITE DESIGN AND BUILDING FORM SUBSECTIONS K.1.a.ii.F., K.1.b.ii.H., K.1.c.ii.F., K.1.d.ii.G., K.1.e.ii.G., BY CLARIFYING THE ALLEY SETBACK REQUIREMENT; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A CODIFYING CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Ketchum City Council initiated a community-based Downtown planning process in October 2005 to begin defining appropriate strategies to accomplish the policy directions of the Comprehensive Plan related to the Community Core; and

WHEREAS, the Ketchum City Council adopted the Framework of the Downtown Master Plan in February 2006 and adopted the Downtown Master Plan in September 2006; and

WHEREAS, the Framework of the Downtown Master Plan and the Downtown Master Plan establish a form-based approach to regulating development in the downtown which uses the transfer of development rights; and

WHEREAS, the purpose of the Community Core District is to promote a compact and cohesive center of commerce and culture, to promote an attractive and safe pedestrian environment; and

WHEREAS, a section for transfer of development rights was reserved in Title 17, Chapter 17.64, Community Core District, and

WHEREAS, the City filled that reserved section by adopting Ordinance No. 1005 thereby establishing a program for the transfer of development rights; and

WHEREAS, the City of Ketchum has determined that the transfer of development rights section of Title 17, Chapter 17.64, Community Core District are consistent with achieving the previously cited goals; and

WHEREAS, the Planning and Zoning Commission for the City of Ketchum has recommended that the City restate and make certain modifications to Ordinance No. 1005 based upon its analysis of collected data, its public work sessions and public hearing, as well as suggestions from property owners; and

WHEREAS, the City Council has reviewed the Planning and Zoning Commission recommendation and made modifications based on its own analysis, and public input at duly noticed public hearings.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Ketchum, Idaho, Chapter 17.64, Title 17 of the Ketchum Municipal Code, COMMUNITY CORE DISTRICT, is hereby amended as follows:

SECTION 1. FINDINGS. That Ordinance Number 1005 is hereby amended, altered, and changed by adding thereto the underlined language herein below and by deleting there from the language stricken through, to wit:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated in this Ordinance by reference.

2. Market Analysis. Pursuant to Idaho Code Section 67-6515A, the Ketchum City Council hereby finds that before designating sending areas and receiving areas, the Ketchum Planning and Zoning Commission analyzed the market for TDR's in an attempt to assure that the areas designated as receiving areas will have the capacity to accommodate the number of development rights expected to be generated from the sending areas. Further, the Ketchum City Council hereby finds that such designated receiving areas have such capacity based upon the following information:

Total Square Footage of Sending TDRs.

National Historic Registry	63,233 ft.2 x 2.25	=	142,275
Phase I Multiple Criteria	87,057 ft.2 x 2.25	=	195,878
Phase I Traditional Scale Only	76,274 ft.2 x 2.00	=	152,548
Phase II Multiple Criteria	0	=	0
Phase II Traditional Scale Only	92,125 ft.2 x 2.00	=	184,250
Total			674,951

Applicable setbacks for fourth floors will permit a maximum coverage on the fourth floor of only 62% of the lot area of a 100' x 55' lot, 66% of the lot area of a 150' x 55' lot and 62% of the four irregularly shaped lots north of Main Street and West of Sixth Street.

Total Square Footage of Receivable TDRs.

Irregularly Shaped Lots	111,069 ft.2 x .62	=	73,306
150' x 55' Lots	800,250 ft.2 x .66	=	528,165
100' x 55' Lots	830,000 ft.2 x .62	=	514,910

Total

1,116,381

Accordingly, the market analysis indicates that there will be 674,951 ft.2 of potential sending TDRs and 1,116,381 ft.2 of potential receiving TDRs.

3. Ketchum Comprehensive Plan. The Ketchum City Council hereby finds that the Planning and Zoning Commission considered the City's Comprehensive Plan and hereby finds that no portion of this Ordinance conflicts with such Plan and that this Ordinance complies with the following specific portion of the Comprehensive Plan:

Part 4.1: Land Use

Goal 2: Actively strive for high quality design, architecture and buildings that "fit" with the neighborhood in terms of bulk, scale and style. Ensure all elements of the "built" environment such as signage, lighting, accessory features and landscaping meet quality design standards. Strive for a "built" environment that respects Ketchum's uniqueness as a small mountain resort town.

Finding: The ordinance will create new standards and regulations for building design to encourage pedestrian activities and interaction with buildings while preserving traditional scale in certain areas.

Policy 4.1.3: Reassess building heights in all zones to determine whether or not the current standards are having a negative impact on Ketchum's small mountain town character.

Finding: Maximum building heights are increasing slightly for three story buildings. Four story buildings will be allowed with the purchase of TDRs, which will preserve heritage buildings and properties important to the community thereby maintaining Ketchum's small mountain town character.

Policy 4.1.7: Strengthen the Design Review process to ensure that building bulk is more sensitive to the surrounding neighborhood. In particular, pedestrian friendly design shall be emphasized.

Finding: The average set back requirements encourage undulation and prohibit sheer vertical walls to soften the visual impact to the surrounding neighborhoods.

Chapter 4.5: Downtown Planning Area: Ketchum's Community Core

Policy 4.5.15: The Design Review Standards for the Community Core Zone should be revised to address key issues identified in this Plan, including but not limited to:

- Designing buildings in the Community Core to be in scale with the lot(s) being developed and with the surrounding area without appearing oversized.

Finding: The ordinance will maintain the traditional scale of certain neighborhoods. Additionally, most lots are currently being developed to their maximum potential. Buildings which employ TDRs to obtain additional height and square footage will be only be slightly larger neighboring buildings and should not appear oversized.

- Setting upper stories further back from the street to reduce bulk and minimize winter shading.

Finding: The ordinance will standardize set backs from the property line instead of from the center of the right-of-way while still requiring that fourth and fifth floors be set back further from the street.

- Varying rooflines as well as facades, both to bring light to the street level and to provide visual interest

Finding: The ordinance provides for undulation of the building façade bringing light to the street and providing visual interest.

- Maintaining a “pedestrian scale” as larger buildings replace smaller ones, requiring more specific standards for breaking lengthy facades into smaller – roughly one lot width – elements, reducing the vertical appearance of tall buildings and addressing the number of entrances and the percent of a façade occupied by display windows

Finding: The proposed changes provide for undulation of the building façade and prevent sheer vertical walls by requiring setbacks.

- Ensuring that multiple lot developments are not overly massive in scale

Finding: The ordinance limits multiple lot developments to reasonable set backs and height limitations which will keep them in scale with surrounding buildings.

Part 8: Open Space, Recreation and Heritage

Goal 4: To preserve sites or buildings with historical value to the community.

Finding: The ordinance preserves buildings with historical value to the community by requiring participants in the program to maintain those properties in perpetuity.

Policy 8.22: Develop incentives to protect those sites and buildings that are of historic significance to the community.

Finding: The ordinance provides this incentive by allowing participants in the program to sell a substantial portion of the value of historic buildings while simultaneously preserving those buildings.

4. Effect Upon Delivery of Services by other Political Subdivisions. The Ketchum City Council hereby finds that both the Planning and Zoning Commission and the City Council have given particular consideration to the effects of the ordinance upon the delivery of services by the political subdivisions providing public services, including the Blaine County School District, within the jurisdiction. All such political subdivisions were given prior notice pursuant to statute of such ordinance and public hearings; however, none of them responded indicating that they do not have any concerns that their ability to provide services will be impaired by the ordinance. Because the ordinance encourages the development of additional residential square footage in the Community

Core, it could result in some concentration of students making school bus services more efficient. The ordinance should have no effect whatsoever upon the services provided by Blaine County, the Blaine County Recreation District or the Ketchum Cemetery District. The ordinance may facilitate the construction of affordable workforce housing by both the Ketchum Urban Renewal Agency and by the Blaine County Housing Authority because it will allow for additional market rate units to be constructed to offset the cost of constructing affordable units.

5. Valid Exercise of Police Powers. The Ketchum City Council hereby finds that the ordinance is reasonably necessary to promote the public health, safety and welfare. The traditional scale sites promote quality of life by providing smaller, less dense projects while moving density to more appropriate locations better able to support retail and service businesses and to make the delivery of essential services to the residents more efficient and effective. Historic preservation supports the economy by attracting both tourists with a specific purpose of seeing Ketchum's historic buildings and by attracting tourists who simply like the look and feel of an historically authentic Ketchum and return for multiple visits. Historic buildings create a sense of community. The ordinance encourages new construction which generates jobs, local purchases and LOT taxes while encouraging retail uses on the ground floor.

SECTION 2. That Section 17.64.010.I. of the Ketchum Municipal Code, Transfer of Development Rights, is hereby restated in its entirety and amended, altered, and changed by adding thereto the underlined language herein below and by deleting there from the language stricken through, to wit:

I. Transfer of Development Rights (TDR)

1. The purpose of this Section is to encourage the preservation of significant buildings or clusters of significant buildings representing local history, heritage and traditional scale and architecture.
2. The TDR program is administered through the severance of transferable development rights from eligible properties, herein referred to as Sending Sites. Development rights may then be conveyed and affixed to eligible properties herein referred to as Receiving Sites. Development rights may only be severed and affixed within the city limits of the City of Ketchum, as hereinafter indicated.
3. The TDR program permits ~~property owners within~~ the owners of designated Sending Sites to sever and convey, as a separate development right, undeveloped floor area to be affixed to and developed on a designated Receiving Site.
4. The program is voluntary and the value of development rights is set by the marketplace.
5. Sending Site Regulations. This Section shall apply to properties eligible to sever development rights, ~~herein referred to as Sending Sites~~
 - a. Sending Sites, specified in Figure 1, are intended to include sites on which buildings exist that individually or collectively represent Ketchum history, heritage and traditional scale and/or architecture.
 - i. Phase II Sending Sites ~~sending areas~~, specified in Figure 1, may become Sending Sites ~~sending areas~~ twelve (12) months after adoption of this ordinance provided a property

owner requests designation and the City Council approves requested designation and provided that all applicable legal requirements can be satisfied including, without limitation, a market analysis pursuant to Idaho Code Section 67-6515A.

- b. ~~Criteria for Sending Site Designation Criteria.~~ A property shall include one or more designated Heritage Sites to be designated as a Sending Site.
- c. ~~Criteria for Heritage Site Designation Criteria.~~ A property shall meet at least one of the following criteria to be designated as a Heritage Sending Site:
 - i. Representative of traditional Ketchum residential and commercial architecture (pre-Sun Valley Lodge, late nineteenth century settlement era or post Sun Valley Lodge, mid-century vacation home era), scale, proportion and/or site orientation including but not limited to, being built before 1956; significant periods include, but are not limited to 1880s, 1920s, 1930s; traditional architectural features include, but are not limited to gabled roofs, overhanging eaves, log or brick construction, one to two story, chalet style.
 - ii. Representative of traditional Ketchum residential and commercial scale, proportion and/or site orientation.
 - ~~iii.~~ Representative of Ketchum's community traditions and/or heritage, including but not limited to, mining, railroad, ranching, timber, farming, sheep herding or skiing outdoor recreation.
 - ~~iii.~~ iv. Associated with significant events and/or people of the past, including but not limited to, being a residence or business of an early Ketchum family or resident (1880's to 1940's).
 - ~~iv.~~ v. Listed on, or eligible for, the National or State Register of Historic Places.
- d. In exchange for preservation, in perpetuity, of a building or structure designated as a Heritage Sending Site in perpetuity, owners of such properties located within a designated Sending Site may convey all, or a portion, of the development rights associated with that property as follows:
 - i. The amount of square footage of development rights that can be severed from a designated Sending Site from all Sending Sites other than sites designated solely on meeting the criteria of being representative of traditional Ketchum residential and commercial scale proportion and or site orientation shall be calculated by multiplying the lot area by a floor area ratio of 2.00-2.25.

- ~~ii.~~ The amount of square footage of development rights that can be established from a designated Sending Site proven to be listed on, or eligible for the National Register of Historic Places, as determined or verified by the Idaho State Historic Preservation Office, may be calculated by a floor area ratio of 2.25
 - ii. ~~iii.~~ The maximum lot area per heritage site Sending Site which may be used for such calculation shall be the lesser of the actual square footage of such lot or the original platted town site lot size of 5,500 or 8,250 square feet, regardless of the current legal description or current square footage of the lot on which the heritage site is located.
 - iv. The gross square footage of any addition constructed after February 28, 2007 and or prior to the severing and conveying of development rights shall be subtracted from the amount of square footage of development rights as calculated above.
- iii.e. If an owner conveys only a portion of their development rights, any Once development rights have been severed from a Sending Site, proposed changes or additions to the any building or structure located thereon building designated as a heritage site shall meet the design regulations for Historic Buildings as stated in KMC Section 17.64.020 generally and specifically including, without limitation, Section 17.64.020.4.D as if such structure or building were listed on the National Register of Historic Places or designated as a Local Heritage Site, Landmark or Block whether it actually is or not and any additional regulations adopted by the Ketchum Historic Preservation Commission. The Ketchum Historic Preservation Commission shall review all proposed changes to Sending Site buildings and provide a recommendation to the Planning and Zoning Commission to consider for design review approval. Additions shall be limited to the lesser of ten (10) fifty (50) percent of the existing building square footage or five-hundred (500) square feet, provided the owner has retained or purchased enough development rights for the addition. The square footage of the addition shall be subtracted from the balance of development rights available for severance and conveyance. Any addition or alteration to a building designated as, or eligible to be designated as a Sending Site heritage site that conflicts with the design regulations for Historic Buildings as stated in section 17.64.020 may cause the site to lose its designation, or eligibility, as a Sending Site Heritage Site.
- f. Owners of properties designated as a Sending Sites solely based on meeting the criteria of being representative of traditional Ketchum residential and commercial scale, proportion and/or site

orientation, may convey all, or a portion of the development rights associated with that property as follows:

- i. The amount of square footage of development rights that can be severed shall be calculated by multiplying the lot area by a floor-area-ratio of 2.00.
- ii. The maximum lot area per Sending Site which may be used for such calculation shall be the lesser of the actual square footage of such lot or the original platted town site lot size of 5,500 or 8,250 square feet, regardless of the current legal description or current square footage of the lot on which the heritage site is located.
- iii. Any existing building or structure on the property may be demolished and a new building may be constructed, provided the following criteria are met:
 1. The square footage of the new building does not exceed the square footage of the original principle building that was demolished plus fifty (50) percent.
 2. The front yard setbacks of the original principle building to be demolished are maintained.
 3. The building height and roofline of the original principle building to be demolished are maintained, except a flat roof may be replaced with a sloped roof form and the height may increase to accommodate the new sloped roof form.

f g. Sites A property not designated as a Heritage Sites nor designated as a Sending Sites may apply to the City to be designated as a Sending Site for designation provided the. The City Council may approves the requested designation and provided that all applicable legal requirements can be satisfied including, without limitation, a market analysis pursuant to Idaho Code Section 67-6515A.

g h. Owners of properties approved as a public park or public open space and designated as a Sending Site may sever all development rights associated with that property in exchange for preservation of the park or open space in perpetuity.

- i. The amount of square footage of development rights that can be severed from a designated Sending Site for the preservation of a public park or open space in perpetuity shall be calculated by multiplying the square footage of the lot by a floor-area-ratio of 2.00 2.25.
- ii. The maximum lot area per public park or open space which may be used for such calculation shall be the lesser of the actual square footage of such lot or the original platted town site lot size of 5,500 or 8,250 square feet, regardless of the current legal description or current square footage of the lot on which the heritage site is located.

- h i. Properties approved as a public park or open space not designated as a Sending Site may apply to the City for designation ~~if the Criteria for Heritage Site Designation can be met and in exchange for preservation of the park or open space in perpetuity~~ provided that all applicable legal requirements can be satisfied including, without limitation, a market analysis pursuant to Idaho Code Section 67-6515A.
 - i j. Development rights shall not be severed from vacant lots.
67. Procedure for Severing and Conveying Development Rights.
- a. Eligible property owners desiring to sever development rights from their property shall first file an application with the Ketchum Planning Department on a form acceptable to the Ketchum Planning Director. In addition to any other information reasonably required by the Ketchum Planning Department, such application shall include, without limitation, the following:
 - i. A TDR Conservation Easement in favor of the City of Ketchum in a form approved by resolution of the Ketchum City Council preserving in perpetuity any structure on the Sending Site in a condition as good or better than the condition of such structure on the date of execution of such easement. Without limitation, such easement shall set forth the purpose of the easement identifying the transferable development rights to be severed, denoted by amount of square footage, and establish the City's rights and the owner's obligations, including without limitation, reasonable rights to inspect the property, to compel specific performance and to enjoin activities inconsistent with the purpose of the easement and reasonable rights to maintain, repair and reconstruct the property in the event of damage or destruction. Such TDR Conservation Easement shall specifically describe the property, shall be executed by all lien holders and other parties with an interest of record in any of the affected property and shall be recorded with the Blaine County Recorder.
 - ii. A site plan survey, stamped by a surveyor licensed in the State of Idaho, demonstrating locating the foot print of all structures and trees on the Sending Site, photographs of each elevation of such structures, a brief architectural description and history of such structures, and a statement regarding the gross square footage of such structures.
 - iii. Proof of ownership of the Sending Site.
 - iv. Once a TDR conservation easement is established the square footage may no longer be utilized for development on the Sending Site, except as permitted by 17.64.010.1.f.iii.

- v. The Sending Site property owner shall have no authority over the manner in which the development right is used by subsequent owners of said development right other than to determine whether such right shall revert to the seller if not exercised within an agreed upon time frame pursuant to Idaho Code Section 67-6515A(5).
- b. Application Review and Decision. The Planning Director shall review the application and make a determination of compliance with the following criteria:
 - i. The subject property is a designated Sending Site as shown in Figure 1.
 - ii. The Sending Site has permitted development rights.
 - iii. The establishment of a TDR conservation easement shall not create a non-conforming use or structure. In cases of an existing nonconformity, the action shall not increase the degree of the specific nonconformity.
 - iv. The proposed deed restriction permanently restricts the development of the Sending Site property to the total floor area allowed by zoning minus the amount of square feet of floor area per the TDR conservation easement.
 - v. Any development application to develop floor area beyond that remaining legally connected to the property after severing of development rights shall be considered null and void, except as permitted by 17.64.010.I.f.iii.
- c. Closing. Upon determination of compliance on the mutually agreed upon closing date:
 - i. The property owner shall execute and deliver to the City of Ketchum, the above-referenced TDR Conservation Easement which shall be promptly recorded.
 - ii. Upon receipt of proof of such TDR Conservation Easement, the Mayor of the City of Ketchum, or designee, shall execute and deliver to the property owner an Order Severing Development Rights which shall be promptly recorded.
 - iii. The City Clerk shall keep a record of all severed development rights identifying such rights, the property from which they were severed and the ownership of such rights from the time they are initially severed through all transfers, sales, conveyances and assignment of such rights until such rights are affixed to an approved Receiving Site through the process set forth herein.
- d. Upon recording of both the TDR Conservation Easement and the Order Severing Development Rights, such property rights constitute an interest in real property and may be sold, assigned, transferred, or conveyed. Once severed from the Sending Site, such development rights may only be sold, assigned, transferred or

conveyed with a TDR Quitclaim Deed and a Notice of Change in TDR Ownership pursuant to a form adopted by resolution of the Ketchum City Council. Such TDR Quitclaim Deed shall specifically describe the property, shall be executed by all lien holders and other parties with an interest of record in any of the affected property and shall be recorded with the Blaine County Recorder.

78. Receiving Site Regulations.

- a. Receiving Sites shall include properties in the City of Ketchum where additional building height has been determined by the City Council to be advantageous to the City for its strategic community development purposes and acceptable in terms of mass, scale and community character.
- b. ~~Criteria for Receiving Site Designation~~ Criteria. The Community Core Zoning District is a designated receiving area. A property within the Community Core Zoning District may be designated as a receiving site provided all of the following criteria are met:
 - i. Is not a designated Sending Site or a designated Phase II Sending Site.
 - ii. Is not located in subdistrict D, traditional neighborhood, and
 - iii. Is not located adjacent to Main Street, between Second Street and Fourth Street.
- c. Affixing development rights through the process set forth herein allows the construction of a specified amount of floor area square footage on a fourth floor on a designated Receiving Site. A fourth floor may only be constructed on a designated Receiving Site and only through the transfer of development rights, except as provided for hotels.
- d. The market for development rights is unrestricted and the City shall not prescribe nor guarantee the monetary value of a development rights.

89. Procedure for Affixing Development Rights

- a. ~~Eligible property owners~~ The owners of eligible Receiving Sites desiring to affix development rights to their property shall first file an application with the Ketchum Planning Department on a form acceptable to the Ketchum Planning Director. In addition to any other information reasonably required by the Ketchum Planning Department, such application shall include, without limitation, the following:
 - a. Designation. The subject property shall be designated as a Receiving Site by the City Council.
 - b. Proof of ownership of both the Receiving Site ~~receiving property~~ and the transferred development rights.

- i. The legal description of the Receiving Site ~~property to which the development rights are affixed;~~
- ii. The square footage increase from the allowable floor area (not an absolute total floor area), according to the applicable regulations of the Receiving Site at the time of building permit application;
- c. The Receiving Site shall remain subject to amendments to the allowable floor area and eligible for certain floor area incentives and/or exemptions as may be authorized by this Title, as may be amended from time to time; and
- d. Upon approval of such application by the Ketchum Planning Director, the Mayor of the City of Ketchum, or designee, shall execute and deliver to the property owner an Order Affixing Development Rights which shall be promptly recorded. The square footage increase in development rights is permanently affixed to the Receiving Site and may be reused only on the Receiving Site in the event such Receiving Site is redeveloped.

910. If two (2) or more original platted town site lots have been combined into a single parcel with an area greater than the original platted town site lot size of 5,500 or 8,250 square feet, and a portion(s) of the single parcel contains a designated Sending Site or Receiving Site ~~Heritage Site(s)~~ and other portions of the single parcel meet the Sending Site or Receiving Site criteria, then these portions of the single parcel shall not be designated separately.

- a. Such a parcel may be subdivided to create separate conforming lots. The resulting lot(s) which meet the Receiving Site or Sending Site criteria may be eligible for designation as a Receiving Site or Sending Site.

~~11. Designated zones for five story hotels. As provided in 17.64.010.H.1, a five story hotel may be built in areas designated by the City Council.~~

- ~~a. Criteria for five story hotel site designation. A property shall meet all of the following criteria to be designated as a five story hotel site:~~
 - ~~i. Is located in sub-district A, retail core~~
 - ~~ii. Is highly visible to visitors~~
 - ~~iii. Is convenient to walk to retail center~~
 - ~~iv. Is near central plaza, Main Street and Sun Valley Road~~
 - ~~v. Contributes to the retail vibrancy~~
 - ~~vi. Is not located on Main Street between River Street and Sixth Street.~~
 - ~~vii. Has a minimum lot area of thirty three thousand (33,000) square feet.~~

1042. Application Materials. A completed application form for designation, severing, conveying, or affixing of development rights along with the required technical information and plans, as published by the Planning Director, and appropriate fees shall constitute a complete application for review and decision and shall be filed by the applicant with the Ketchum Planning Department.
1143. Semi Annual Review. A report shall be prepared by staff on a semi-annual basis to review and assess the TDR program and make recommended adjustments.

Figure 1: Map and Legal Descriptions of TDR Sending Sites (Please note this map has been amended to include the Knob Hill Ride Condominiums – 700 North Leadville south of Block 28)



Legal Descriptions of Sending Sites

Address	Block	Lot	Applicable Heritage Site Criteria
380 Second St. E, 171 and 171 1/2 Leadville Ave	2	8 and 7	<u>i. ii. iv. v</u>
160 N. Main Street	2	Lewis Bank Condos	<u>i. ii. iii. iv</u>
231 1/2 Leadville Ave. N.	3	6	<u>i. ii. iii. iv</u>
271 Leadville Ave. N.	3	7	<u>i. ii. iii. iv</u>
220 N. Main St.	3	N 42.5 ft of Lot 2, all of 3 & 4	<u>i. ii. iii. iv</u>
280 N Main St.	3	N 42.5 ft of Lot 2, all of 3 & 4	<u>i. ii. iii. iv</u>
240 N Main St.	3	N 42.5 ft of Lot 2, all of 3 & 4	<u>ii</u>
260 N Main St.	3	N 42.5 ft of Lot 2, all of 3 & 4	<u>ii</u>
200 N Main St.	3	Lot 1, S 12.5 ft of Lot 2	<u>ii</u>
300 N. Main St.	4	1	<u>i. ii. iii. iv</u>
320 N Main St.	4	S 25 ft of Lot 2	<u>i. ii. iii. iv</u>
340 N Main St.	4	N 30 ft of Lot 2, All of Lot 3, S 20 ft of Lot 4	<u>ii</u>
580 N Main St	6	Lot 6, E 1/2 of Lot 4, FR W 1/2 of Lot 4	<u>iii</u>
271 Sun Valley Rd.	17	SW 23'x30' of Lot 4	<u>i. ii. iii. iv</u>
211 N. Main St.	18	S 27'4" of Lot 4	<u>i. ii. iii. iv. v</u>
231 N. Main St.	18	N 27'7.5" of Lot 4	<u>i. ii. iii. iv</u>
251 N. Main Street	18	S 54' of Lot 3	<u>ii</u>
271 N. Main Street	18	Lot 2 and N 1' of Lot 3	<u>ii</u>
291 N. Main Street	18	1	<u>ii</u>
180 Leadville Ave.	22	4	<u>i. ii. iv. v</u>
140 Leadville Ave. North	22	3	<u>ii</u>
200 Leadville Ave.	23	1	<u>i. ii. iv</u>
240 Leadville Ave. N.	23	2	<u>ii</u>
260 Leadville Ave.	23	3	<u>ii</u>
491 Washington Ave.	36	1	<u>ii</u>
471 Washington Ave.	36	2	<u>ii</u>
171 4th Street East	36	4	<u>ii</u>
431 Washington Ave.	36	3	<u>ii</u>
380 1st Ave.	37	5	<u>i. ii. iv</u>
171 River St E, 131 River St E, 180 First St E, 100 First St E	40	1, 2, 3, 4, 5, 6, 7, and 8	<u>i. ii. iii. iv. v</u>
280 East Ave.	43	3 and 4	<u>i. ii. iv</u>
531 Fifth St. E.	46	1	<u>i. ii. iii</u>
560 East Ave.	46	3	<u>i. ii. iv</u>
520 East Ave.	46	2	<u>i. ii. iv</u>
520 E 2nd St.	42	E 75' x 55' of Lot 4	

PHASE II Sending Sites

Address	Block	Lot	Applicable Heritage Site Criteria
591 N East Ave	26	Lot 8 & N 1/2 of Lot 7	<u>ii</u>
531 N East Ave	26	Lot 6 & S 1/2 of Lot 7	<u>ii</u>
511 N East Ave	26	Lot 5	<u>ii</u>
200 E 6th St	15	Lot 5	<u>ii</u>
560 N Washington Ave	15	Lot 6	<u>ii</u>
520 N Washington Ave	15	Lot 7	<u>ii</u>
500 N Washington Ave	15	Lot 8	<u>ii</u>
480 N Washington Ave	16	Lot 5	<u>ii</u>
460 N Washington Ave	16	Lot 6	<u>ii</u>
440 N Washington Ave	16	Lot 7	<u>ii</u>
211 E 4th St	16	Lot 8	<u>ii</u>
591 N Washington Ave	35	Lot 1	<u>ii</u>
571 N Washington Ave	35	Lot 2	<u>ii</u>
531 N Washington Ave	35	Lot 3	<u>ii</u>
191 E 5th St	35	Lot 4	<u>ii</u>
<u>520 E 2nd St.</u>	<u>42</u>	<u>E 75' x 55' of Lot 4</u>	<u>ii</u>

If there are any inconsistencies between the Legal Descriptions of the TDR Sending Sites, ~~Receiving Sites and Fifth Floor Hotel Sites~~ and the Map of the TDR Sending Sites, ~~Receiving Sites and Fifth Floor Hotel Sites~~, the Legal Descriptions control.

SECTION 3. Section 17.64.010.K, subsections K.1.a.iii.D.2., K.1.b.iii.D.2., K.1.c.iii.D.2., and K.1.e.iii.C.2. are amended by deleting therefrom the stricken language and adding thereto the underlined language hereinbelow, to wit:

~~The fourth floor shall be setback a minimum of fifty five (55) feet measured from the centerline of the adjacent right of way. On streets and avenues the fourth floor shall be setback from the property line a minimum of ten (10) feet with an average of fifteen (15) feet. The average setback shall be calculated based on the built portion of the fourth floor façade and shall be calculated for each street or avenue elevation; the calculation of the average setback is not cumulative. In addition to the minimum and average setback requirement from the property line, the fourth floor shall be setback a minimum of five (5) feet from the facade of the third floor.~~

SECTION 4. Section 17.64.010.K, subsection K.1.f.iii.D.2 is amended by deleting therefrom the stricken language and adding thereto the underlined language hereinbelow, to wit:

~~The fourth floor and, if permitted, fifth floor shall be setback a minimum of fifty five (55) feet measured from the centerline of the adjacent right of way. On streets and avenues the fourth floor and fifth floors shall be setback from the property line a minimum of ten (10) feet with an average of fifteen (15) feet. The average setback shall~~

be calculated based on the built portion of the fourth and fifth floor façades and shall be calculated for each street or avenue elevation: the calculation of the average setback is not cumulative. In addition to the minimum and average setback requirement from the property line, the fourth and fifth floors shall be setback a minimum of five (5) feet from the wall of the third floor.

SECTION 5. Section 17.64.010.K, subsections K.1.a.ii.F., K.1.b.ii.H., K.1.c.ii.F., K.1.d.ii.G., K.1.e.ii.G., are amended by deleting therefrom the stricken language and adding thereto the underlined language hereinbelow, to wit

Alley Setback: The first floor and second floor of a building façade shall be setback a minimum of three (3) feet from an alley to provide space for utility equipment and service areas and not impede the alley width for vehicular access. Vertical and horizontal articulation of the floors above the second floor shall be provided from the property line on the alley elevation to reduce the appearance of bulk and flatness.

SECTION 6: SAVINGS AND SEVERABILITY. If any section, subsection, paragraph, subparagraph, item, provision, regulation, sentence, clause or phrase is declared by a court to be invalid, such actions shall not affect the validity of this Ordinance as a whole or any part thereof other than the part declared invalid.

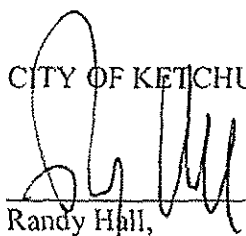
SECTION 7. CODIFICATION. The City Clerk is instructed pursuant to Section 1-1-3 of the City of Ketchum Municipal Code to immediately forward this ordinance to the codifier of the official municipal code for proper revision of the code.

SECTION 8. REPEALER CLAUSE. All City of Ketchum Ordinances or parts thereof which are in conflict herewith are hereby repealed.

SECTION 9. EFFECTIVE DATE. This Ordinance shall be in full force and effect upon the date of its publication as provided by law which is February 27, 2008.


PASSED by the City Council and APPROVED by the Mayor this 19th day of February, 2008.

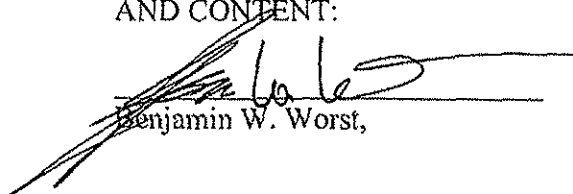
CITY OF KETCHUM, IDAHO


Randy Hall,
Mayor

ATTEST:

APPROVED AS TO FORM
AND CONTENT:


Sandra E. Cady, CMC


Benjamin W. Worst,

City Treasurer/Clerk

City Attorney

Publish: Idaho Mountain Express
February 27, 2008